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STATE OF NORTH CAROLINA



GOVERNMENTAL EVALUATION COMMISSION REPORT
ON
PRIVATE DETECTIVES

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INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

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TABLE OF CONTENTS

	PAGE
SUMMARY	ii
RECOMMENDATION	iii
CONCLUSION	iii
FINDINGS	iii
INTRODUCTION TO GOVERNMENTAL EVALUATION COMMISSION	1
SCOPE OF THE EVALUATION	3
HISTORICAL BACKGROUND OF PRIVATE DETECTIVES' STATUTE	6
EVALUATION ELEMENTS	7

SUMMARY

As directed by Chapter 143, Article 1.1, of the General Statutes, the Governmental Evaluation Commission has conducted its evaluation of the function of licensing private detectives as set forth in Chapter 66, Article 9A, of the N. C. General Statutes enacted in 1961. The State Bureau of Investigation acted as the licensing agency.

In 1973 the "Private Protective Services Act" was passed which combined the regulation of all protective services into one agency. The regulatory provisions of the 1961 Private Detective Law were included in the 1973 protective services statute under one licensing board.

The 1961 statute was not repealed by the 1973 statute, even though the 1973 law superseded the 1961 law.

The Commission concludes that no harm will result if the 1961 law is allowed to terminate as scheduled on July 1, 1979.

The Commission recommends that the program created by Chapter 66, Article 9A, of the General Statutes not be re-established.



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Governmental Evaluation Commission
Report on Private Detectives

RECOMMENDATION:

The Commission recommends that Article 9A of Chapter 66 of the General Statutes, entitled "PRIVATE DETECTIVES", not be re-established.

CONCLUSIONS:

The regulatory provisions of the 1961 Private Detectives Law have been incorporated into the 1973 Private Protective Services Act, and the statute is now of no effect, even though it was not repealed in 1973.

The Commission concludes that no harm to the public will result if Article 9A of Chapter 66 of the General Statutes, entitled "*Private Detectives*", is not re-established.

FINDINGS:

The Private Detective business in North Carolina is currently operating under Chapter 74B of the General Statutes, entitled "*Private Protective Services Act*", enacted in 1973.

In 1961, Article 9A of Chapter 66 of the General Statutes had been enacted to regulate only private detectives. There was no independent licensing board and the State Bureau of Investigation administered the act. The 1961 statute was a practice act which prohibited engaging in the detective business without a license.

In 1973 a consolidated board was created to regulate all of the businesses related to private protection services, including private detectives. The regulatory provisions of the 1961 Private Detectives law were incorporated into the 1973 law, but were not repealed in 1973.

INTRODUCTION TO GOVERNMENTAL EVALUATION COMMISSION

Chapter 143, Article 1.1, of the General Statutes terminates the regulation of various occupations. By repealing the laws establishing them, a number of boards and commissions that license or regulate occupations are scheduled to be terminated every two years. One-third of the total of these agencies will cease to exist on July 1, 1979, unless re-established by the General Assembly.

The statute requires that prior to termination each agency be reviewed by the Governmental Evaluation Commission. The Commission is charged with conducting a "performance evaluation of each program or function scheduled for termination."

Upon completion of the evaluation, the Commission will submit a report to the General Assembly, including a recommendation as to whether the program or function in question, and the responsible agency, "should be terminated, reconstituted, re-established, or continued with or without modification of the relevant statutes."

The statute states that the Commission's basic determination is *"of the need for continuance of an agency program or function"*, and that it shall use 13 listed evaluation elements in making its determination. The Commission is not limited to the use of the 13 elements in determining the presence of a public need for the continuance of a program or agency.

The Commission was authorized to employ a staff to help it in its work. The staff will conduct an evaluation and report its findings to the Commission in a staff report. The agencies may be given the opportunity to appear before the Commission and respond to the staff report. After making any modifications it believes desirable, the Commission will adopt a Proposed Commission Report.

The statute requires that public hearings be held on the proposed report, after a notice of the substance of the report and other details of the hearing is published. Upon completion of the hearing and consideration of the submitted evidence and arguments with respect to this evaluation, the Commission shall adopt its final recommendations. These recommendations will then be submitted to the General Assembly for its deliberation.

SCOPE OF THE EVALUATION

The purposes of the evaluation process are stated in the statute creating the Governmental Evaluation Commission.

§143-34.10. Findings and purposes. - The General Assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and re-establishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies.

A recommendation on the "need for the continued existence of existing....regulatory bodies" is the end product of this evaluation process. An evaluation of "need" for the continued existence must focus on the public benefits resulting from the continued existence of a program or agency. The benefits to the persons the agency regulates are not reasons for continuing the agency.

In focusing on "need" the inevitable question that must be considered is: What is the harm to the public if there is no regulation of the occupation?

It can be argued that some possible harm is present in allowing unlicensed persons to serve the public in any occupation or capacity. There is always some risk that a member of the public will choose the wrong person in a selection process where there is no knowledge of competency or honesty. However, this selection process is a hallmark and strength of the free enterprise system.

On the other hand, regulation in any form, by any means, is

restrictive of certain individual liberties protected by Article 1.1 of the North Carolina Constitution, which provides that all persons are afforded rights of "life, liberty, and the enjoyment of the fruits of their on labor, and the pursuit of happiness." The state, through its police power, may enact legislation which invades these rights only if there is a real and substantial relationship between the legislation and the protection of the public health, safety, or welfare.

In the evaluation process, the underlying question asked by the legislature can be stated: Is this regulation a proper exercise of the state's police power? Is the public need for regulation sufficient to justify making available to the regulatory body the authority of the State of North Carolina to imprison, to fine, and to deprive the right of earning a living to a person who violates the regulatory statute? The regulatory statute makes available to the agency, for enforcement, the State Judiciary, the State Attorney General, the police, and the power to collect money for use of the agency.

The evaluation question to be answered could be stated another way: Does this regulatory statute protect the public from potential serious harm so that if there were no statute, serious harm would be done to the public's health, safety, or welfare?

The key words are "serious harm". If the answer to the evaluation question is "No", then there is no public need for the program or agency and the statute must not be continued.

If the answer is "Yes", then the Commission must look at all parts of the program and agency to determine if they are doing what the statute

calls for them to do in an efficient and effective manner.

The General Assembly is the final authority on the recommendations of the Commission. A Committee of Reference in each House of the General Assembly will hold a public hearing on the recommendations relating to each agency. In the hearing the agency has the burden of demonstrating a public need for the continued existence of the agency and its program or function.

HISTORICAL BACKGROUND OF PRIVATE DETECTIVES' STATUTE:

The Private Detectives Law of 1961, enacted by Article 9A of Chapter 66 of the General Statutes, did not create an independent licensing board. The State Bureau of Investigation administered the law and issued licenses. The act related solely to "detective business" as defined in the act. It was a "practice act" prohibiting engaging in detective business without a license.

In 1973 an all-inclusive act was passed which consolidated all of the private detective services, such as armored cars, alarm signal services, secret electrical eavesdropping equipment locators, courier service, truth testers, patrol and guard service, guard dog service, and private detectives, into one regulatory agency. The 1973 act, chapter 74B of the General Statutes, superseded the Private Detectives Law of 1961, but did not formally repeal it.

The Private Detectives business is now regulated under the 1973 statute.

EVALUATION ELEMENTS

The statute lists 13 evaluation elements to be used in making a determination of the need for continuance of an agency program or function. The statute specifically allows other evaluation elements to be used.

The performance evaluation of the Private Detectives using the 13 elements follows:

EVALUATION ELEMENT #1

AN IDENTIFICATION OF THE OBJECTIVES INTENDED FOR THE
AGENCY PROGRAM AND THE PROBLEM OR NEED WHICH THE PROGRAM
WAS INTENDED TO ADDRESS.

G.S. 66 Article 9A provides for the licensing of private detectives. The statute does not include a statement of purpose or objectives intended.

EVALUATION ELEMENT #2

AN ASSESSMENT OF THE DEGREE TO WHICH THE ORIGINAL OBJECTIVES OF THE AGENCY PROGRAM HAVE BEEN ACHIEVED EXPRESSED IN TERMS OF PERFORMANCE, IMPACT, OR ACCOMPLISHMENTS OF THE PROGRAM AND OF THE PROBLEM OR NEED WHICH IT WAS INTENDED TO ADDRESS. SUCH ASSESSMENT SHALL EMPLOY PROCEDURES OR METHODS OF ANALYSIS WHICH THE COMMISSION DETERMINES TO BE APPROPRIATE TO THE TYPE OR CHARACTER OF THE PROGRAM.

The private detectives licensing statute scheduled for review by the Governmental Evaluation Commission has been superseded. The Private Protective Services Board currently administers Chapter 74B as opposed to G.S. 66 Article 9A. There is no agency program presently administered under G.S. 66 Article 9A.

EVALUATION ELEMENT #3

A STATEMENT OF THE PERFORMANCE AND ACCOMPLISHMENTS
OF THE AGENCY PROGRAM IN THE LAST FISCAL YEAR AND OF
THE BUDGETARY COSTS INCURRED IN THE OPERATION OF THE
PROGRAM.

There is no agency program currently administered under G.S. 66
Article 9A.

EVALUATION ELEMENT #4

A STATEMENT OF THE NUMBER AND TYPES OF PERSONS
SERVED BY THE AGENCY PROGRAM.

There is no agency program as such under G.S. 66 Article 9A.

EVALUATION ELEMENT #5

A SUMMARY STATEMENT, FOR THE LAST COMPLETED FISCAL YEAR, OF THE NUMBER BY GRADE, AND COST OF PERSONNEL EMPLOYED IN CARRYING OUT THE AGENCY PROGRAM AND A SUMMARY STATEMENT OF THE COST OF PERSONNEL EMPLOYED UNDER CONTRACT IN CARRYING OUT THE PROGRAM.

There is no agency program carried out under G.S. 66 Article 9A.

EVALUATION ELEMENT #6

AN ASSESSMENT OF THE DEGREE TO WHICH THE OVERALL POLICIES OF THE AGENCY PROGRAM, AS EXPRESSED IN THE RULES, REGULATIONS, ORDERS, STANDARDS, CRITERIA, AND DECISIONS OF THE AGENCY MEET THE OBJECTIVES OF THE GENERAL ASSEMBLY IN ESTABLISHING THE PROGRAM.

There are no current rules, regulations or orders under G.S. 66 Article 9A.

EVALUATION ELEMENT #7

AN ASSESSMENT OF THE EFFECT OF THE AGENCY PROGRAM ON THE STATE ECONOMY INCLUDING COSTS TO CONSUMERS AND BUSINESSES.

There is no agency program carried out under G.S. 66 Article 9A.
As such there is no economic cost.

EVALUATION ELEMENT #8

AN EVALUATION OF THE REPORTING AND RECORD-KEEPING REQUIREMENTS AND ACTIVITIES OF THE AGENCY PROGRAM INCLUDING THE MANAGEMENT AND CONTROL OF INFORMATION AND RECORDS AND THE VALUE OF THE INFORMATION GATHERED COMPARED TO THE COST TO RESPONDENTS, AND AS ASSESSMENT OF METHODS TO REDUCE AND SIMPLIFY THE REPORTING AND RECORD-KEEPING REQUIREMENTS.

There are no agency activities under G.S. 66 Article 9A.

EVALUATION ELEMENT #9

A SUMMARY STATEMENT OF THE BUDGET AND PROGRAM OF THE AGENCY FOR THE CURRENT FISCAL YEAR AND BUDGET PROJECTIONS FOR THE NEXT SUCCEEDING FISCAL YEAR IF THE PROGRAM WERE TO BE CONTINUED.

There is no current fiscal budget nor any projected budget for succeeding years under G.S. 66 Article 9A.

EVALUATION ELEMENT #10

AN ASSESSMENT OF WHETHER THE AGENCY HAS PERMITTED
QUALIFIED APPLICANTS TO SERVE THE PUBLIC, AND
WHETHER THE AGENCY HAS ENCOURAGED PARTICIPATION
BY THE PUBLIC IN MAKING ITS RULES AND DECISIONS,
AS OPPOSED TO PARTICIPATION SOLELY BY THE PERSONS
IT REGULATES.

There is no functional agency under G.S. 66 Article 9A, nor any
persons regulated or benefited thereunder.

EVALUATION ELEMENT #11

AN EVALUATION OF THE EXTENT TO WHICH OPERATION
HAS BEEN EFFICIENT AND RESPONSIVE TO PUBLIC NEEDS.

There is no operation under G.S. 66 Article 9A.

EVALUATION ELEMENT #12

AN EVALUATION OF THE EXTENT TO WHICH COMPLAINTS
HAVE BEEN EXPEDITIOUSLY PROCESSED TO COMPLETION
IN THE PUBLIC INTEREST.

There is no agency under G.S. 66 Article 9A to hear complaints.

EVALUATION ELEMENT #13

AN ANALYSIS OF THE SERVICES AND PERFORMANCE ESTIMATED
TO BE ACHIEVED IF THE AGENCY OR AGENCY PROGRAM WERE
CONTINUED.

There are no projected services to be achieved under G.S. 66
Article 9A.

